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| EXAMINER HAMMER, KATIE L | | | | |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/538,024

Applicant(s)

BORNEMANN ET AL.

Examiner

KATIE HAMMER

Art Unit

1796

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 and 11-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 and 11-14 is/are rejected.
- 7) ☒ Claim(s) 13 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 June 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SF-08)
Paper No(s)/Mail Date 6/8/2005.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
- 5) ☐ Notice of Informal Patent Application.
- 6) ☐ Other: _____.

Claims 1-9 and 11-14 are pending in this application.

DETAILED ACTION

Claim Objections

Claim 13 is objected to under 37 CFR 1.75 as being a substantial duplicate of claim 9. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper to object to the other as being a substantial duplicate of the earlier claim. See MPEP § 706.03(k).

Drawings

The drawings are objected to under 37 CFR 1.83(a) because they fail to show the details of the composition layers and sheets as described in the specification on page 11 and 12. The fragmentary views as drawn do not seem to clarify or illustrate the instantly claimed invention.

Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary,

the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-9 and 11-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dzen et al. (US 6,008,145), in view of Kinn et al. (US 2001/0008965 A1).

As to claim 1, Dzen et al. (US '145) teaches hydrophilic polyolefin materials (composition for the permanent hydrophilization of polyolefin fibers and filaments, see col. 2, lines 19-23) made from a mixture of at least one polyolefin and at least one additive containing a fatty acid ester of the general formula $R-CO-O-CH_2-CH_2-O-R'$, where R is a straight-chain or branched-chain alkyl residue, and where $R'=H$, $-CH_3$, $-C_2H_5$, $-C_3H_7$, $-C_4H_9$ (non-ionic surfactant, component A of the composition of the invention is

alkoxylated C₈-C₁₈ fatty acid ester, see col. 3, lines 44-52; Example 1 teaches a fatty acid polyethylene glycol ester methyl ether as the non-ionic surfactant), wherein the polyolefin materials include a subsequent activation of the fatty acid ester on the surface of the polyolefin material by applying a surface active substance in the form of a formulation which contains a silicone compound (one cationically modified polydimethyl siloxane, see col. 2, lines 47-64) and a quaternary ammonium compound (at least one quaternary ammonium compound, see col. 2, lines 25-37).

Dzen et al. (US '145) teaches hydrophilic polyolefin materials as described above, however fails to teach or disclose that the fatty acid ester is a melt additive or that the R is an alkyl residue with 23 to 35 carbon atoms.

As to the number of carbon atoms in the alkyl residue, it is noted that structurally similar compounds are generally expected to have similar properties. The 18 carbon atoms in the fatty acid ester taught by Dzen et al. are structurally similar to the 23 carbon atoms instantly claimed. In re Gvurik, 596 F. 2d 1012, 201 USPQ 552. Closely related homologues, analogs and isomers in chemistry may create a prima facie case of obviousness. In re Dillon USPQ 2d 1 897, 1904 (Fed. Cir. 1990); In re Payne 203 USPQ 245 (CCPA 1979); In re Mills 126 USPQ 5 13 (CCPA 1960); In re Henze 85 USPQ 261 (CCPA 1950); In re Hass 60 USPQ 544 (CCPA 1944). Burden is shifted to the Applicant to provide evidence teaching that the particular number of carbon atoms produces a new and unexpected result which is different in kind and not merely in degree from the teachings of the prior art.

As to the melt additive limitation, Kinn et al. (US '965) teaches a polyolefin nonwoven web which has durable hydrophilic properties that is formed by a blend of a hydrophobic polyolefin and a hydrophilic melt additive (see para. 0010-0011) where a suitable class of melt additives are monomer and dimer fatty acids having a carbon chain length in the range of 6 to 50, preferably 18 to 36 (see para. 0013-0016).

Therefore, in view of the teaching of Kinn et al., one having ordinary skill in the art at the time the invention was made would be motivated to modify the hydrophilic polyolefin materials taught by Dzen et al. by adding the fatty acid ester as a melt additive taught by Kinn et al. to arrive at the claimed invention because Dzen et al. teaches that the fatty acid ester is a non-ionic surfactant and therefore is in liquid form (see Examples 1-4) and Kinn et al. teaches that it is known in the art of synthesizing hydrophilic polyolefin fibers to add hydrophilic melt additives (see para. 0011). Kinn et al. clearly teaches the use of melt additives, and, thus, a person of ordinary skill in the art would be motivated to arrive at the instantly claimed hydrophilic polyolefin materials with a reasonable expectation of success, and would expect such a composition to have similar properties to those claimed, absent unexpected results.

As to claims 2-6, Dzen et al. teaches the polyolefin material wherein the silicon compound is cationically modified (one cationically modified polydimethyl siloxane, see col. 2, lines 47-64 and col. 3, lines 33-43); polyolefin material wherein the quaternary ammonium compound is a quaternized ester of fatty acids and triethanol amine (see col. 2, lines 25-48); the polyolefin material wherein the formulation for the subsequent activation of the used fatty acid ester on a fiber surface is an aqueous preparation

(composition present in the form of an aqueous dispersion or emulsion, see col. 3, lines 63-67); the polyolefin material wherein the formulation for the subsequent activation of the used fatty acid ester on a fiber surface is set on the surface physically (preferred if the fiber fleeces finished according to the invention are physically strengthened, see col. 4, lines 48-51); polyolefin material which contains 0.01 to 0.5% by weight of the formulation for activating the used fatty acid ester on a fiber surface (composition applied in the form of an aqueous emulsion or dispersion to the fibers, filaments, or nonwovens in a quantity of from 0.2 to 2%, see col. 4, lines 27-31).

As to claims 7-9 and 11-13, Dzen et al. teaches fibers produced from a polyolefin material (see col. 4, lines 22-26); filaments produced from a polyolefin material (see col. 4, lines 22-26); a nonwoven produced from a polyolefin material (see col. 4, lines 22-26); the nonwoven wherein it has repeated strike-through time measurements according to the EDANA test method ERT 154.0.00 of smaller than 5 seconds (see col. 4, lines 22-26; it is noted that since the chemical composition is the same, it would be obvious to one of skill in the art that the nonwoven material that results would have similar test results); the nonwoven wherein it has in the determination of a repeated runoff according to the EDANA test method ERT 152.0-99, a repeated runoff of less than 25% by weight of the test fluid based on an applied quantity of fluid (see col. 4, lines 22-26; it is noted that since the chemical composition is the same, it would be obvious to one of skill in the art that the nonwoven material that results would have similar test results); a nonwoven product containing a nonwoven of claim 9 (see col. 4, lines 22-26).

As to claim 14, Dzen et al. teaches a method of producing hydrophilic polyolefin materials (components thoroughly mixed, diluted to an aqueous dispersion, and used as a spinning preparation for the permanent hydrophilic finishing of three polypropylene substrates, see Examples 1-4) which consist of at least one polyolefin and an additive containing a fatty acid ester (non-ionic surfactant is alkoxylated C₈-C₁₈ fatty acid esters, see col. 3, lines 44-53), wherein the polyolefin materials include a subsequent activation of the fatty acid ester contained in the additive on the fiber surface by applying a surface-active substance in the form of a formulation (composition applied in the form of an aqueous emulsion or dispersion to the fibers, filaments, or nonwovens, see col. 4, lines 27-31), which contains a silicone compound (see col. 3, lines 33-43) and a quaternary ammonium compound (see col. 3, lines 53-56).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KATIE HAMMER whose telephone number is (571)270-7342. The examiner can normally be reached on Monday to Friday, 10:00am EST to 6:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Y. Pyon can be reached on (571) 272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Harold Y Pyon/
Supervisory Patent Examiner, Art
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/KLH/